

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

CRYSTAL McCLELLAND,
as next friend for A.N.,

Plaintiff,

v.

Civil No. 06-12811-BC
Honorable Thomas L. Ludington

WAL-MART STORES EAST, L.P., d/b/a
Wal-Mart Supercenter,

Defendant.

**ORDER GRANTING DEFENDANT'S MOTION TO DISMISS
FOR LACK OF SUBJECT MATTER JURISDICTION**

On June 23, 2006, Plaintiff Crystal McClelland, as next friend of her daughter, filed product liability claims against Defendant Wal-Mart Stores East, L.P. Plaintiff asserted federal subject matter jurisdiction based only on diversity of citizenship. On November 30, 2006, the Court ordered Plaintiff to show cause why the case should not be dismissed for lack of jurisdiction under 28 U.S.C. § 1332. On December 6, 2006, Plaintiff responded but still failed to identify the citizenship of the partners in the limited partnership that constitutes Defendant. On December 8, 2006, Defendant filed a motion to dismiss for lack of subject matter jurisdiction. As of this date, Plaintiff has not filed a response to Defendant's motion, despite the requirement of E.D. Mich. LR 7.1(d)(1)(B) to file any response within 21 days.

The motion is scheduled for oral argument on February 7, 2007. Yet the Court has reviewed Defendant's submissions and finds that the relevant law and facts have been set forth in the motion papers. The Court concludes that oral argument will not aid in the disposition of the motion. Accordingly, it is **ORDERED** that the motion be decided on the papers submitted. *See* E.D. Mich.

LR 7.1(e)(2).

Plaintiff is a citizen of Michigan. Defendant is a limited partnership, but Plaintiff has not pleaded the residence of the partners in that limited partnership. *See Strain v. Harrelson Rubber Co.*, 742 F.2d 888, 889 (5th Cir. 1984) (requiring a plaintiff to affirmatively plead citizenship to invoke diversity jurisdiction); *Hooper v. Wolfe*, 396 F.3d 744, 748 (6th Cir. 2005) (stating that a limited partnership has citizenship where each of its partners reside). Regardless of the amount in controversy, Plaintiff has not demonstrated complete diversity under 28 U.S.C. § 1332. Thus, this Court lacks federal subject matter jurisdiction.

Accordingly, it is **ORDERED** that Defendant's motion to dismiss [dkt #20] is **GRANTED** and that the case is **DISMISSED WITHOUT PREJUDICE**.

It is further **ORDERED** that the scheduling conference and hearing scheduled for **February 7, 2007** is **CANCELLED**.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: January 29, 2007

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on January 29, 2007.

s/Tracy A. Jacobs
TRACY A. JACOBS